

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

OCT 15 1998

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BONARD RAY DENINNO,

Defendant-Appellant.

No. 97-6347
(D.C. No. CIV-97-656-T &
93-CR-55-T)
(W.D. Okla.)

ORDER AND JUDGMENT *

Before **PORFILIO** , **KELLY** , and **HENRY** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Defendant filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The district court denied the motion, and plaintiff appeals. We construe plaintiff's notice of appeal as an application for a certificate of appealability. See Fed. R. App. P. 22(b). Because plaintiff has not made a substantial showing of the denial of a constitutional right, see 28 U.S.C. § 2253(c)(2), we deny the request for a certificate of appealability. The appeal is DISMISSED.

Entered for the Court

John C. Porfilio
Circuit Judge